

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CPS ENERGY,

Plaintiff,

v.

KOCH ENERGY SERVICES, LLC,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 5:21-cv-00583

DEFENDANT’S NOTICE OF REMOVAL

1. Defendant Koch Energy Services, LLC (“Defendant” or “Koch Energy”) removes this suit—a civil dispute between diverse parties involving an amount in controversy exceeding \$75,000.00—pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446.

I. COMMENCEMENT AND SERVICE

2. Plaintiff CPS Energy filed its Original Petition against Defendant Koch Energy on March 23, 2021 in the 150th Judicial District Court of Bexar County, Texas in the case styled Cause No. 2021CI05353, *CPS Energy v. Koch Energy Services, LLC*. See **Ex. 1**.

3. On April 26, 2021, the Parties executed a standstill agreement, whereby Koch Energy agreed to accept service of the Plaintiff’s Original Petition on June 6, 2021.

4. Pursuant to the standstill agreement, Plaintiff served Defendant with the Original Petition on June 6, 2021.

5. This Notice of Removal is filed within thirty days of the receipt of service of process and within one year of the commencement of this action. Therefore, this removal is timely filed under 28 U.S.C. § 1446(b) & (c).

II. DIVERSITY OF CITIZENSHIP

6. Plaintiff **CPS Energy** is a Texas municipal corporation owned by the City of San Antonio with its headquarters in San Antonio. As such, it is a citizen of the state of Texas for purposes of diversity jurisdiction. *See Moor v. Alameda County*, 411 U.S. 693, 717 (1973) (“a political subdivision of a state . . . is a citizen of the State for diversity purposes.”).

7. Defendant **Koch Energy Services, LLC** is a limited liability company. Koch Energy Services, LLC’s sole member is Koch Energy Holdings, LLC, whose sole member is KAES Domestic Holdings, LLC whose sole owner is KAES Equity Holdings, LLC, whose two members are KAES Investor, LLC and Koch Ag & Energy Solutions, LLC. KAES Investor, LLC’s sole member is Koch Ag & Energy Solutions, LLC, whose sole member is Koch Resources, LLC, which is wholly owned by Koch Industries, Inc., which is incorporated, and maintains its principal place of business, in Kansas. Defendants have been unable to locate any person to whom 28 U.S.C. § 1332 applies related to Plaintiff that is a resident of Kansas.

8. Therefore, complete diversity of citizenship exists between the Parties.

III. AMOUNT IN CONTROVERSY

9. Plaintiff filed suit in state court seeking equitable relief over the “Base Contract” which governed the parties’ agreement to buy and sell gas. *See Ex. 1, ¶¶ 22-24.*

10. For matters seeking equitable relief, the amount in controversy is measured “by the valud of the object of the litigation, which, in this case, greatly exceeds \$75,000.00 *See Hunt v. Was. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977).

11. Further, CPS Energy seeks “monetary relief over \$1,000,000.” *See Ex. 1, ¶ 2.* Thus, Plaintiff seeks an amount which greatly exceeds the jurisdictional requirement of \$75,000 in 28 U.S.C. § 1332.

IV. NOTICE

12. Defendant shall give notice of its filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant shall also file with the clerk of the state court, and shall serve upon Plaintiffs' counsel, a notice of the filing of this Notice of Removal.

V. STATE COURT PLEADINGS

13. Copies of all state court pleadings and orders are attached to this Notice of Removal.

VI. EXHIBITS TO NOTICE OF REMOVAL

14. The following documents are attached to this Notice as corresponding numbered exhibits:

- A. Plaintiff's Original Petition is attached as **Exhibit 1**;
- B. State Court notice of removal is attached as **Exhibit 2**; and
- C. The docket sheet is attached as **Exhibit 3**.

VII. CONCLUSION

WHEREFORE, because there is complete diversity between the actual and real parties, and the amount in controversy exceeds \$75,000.00, all applicable requirements have been met, and Defendant, Koch Energy Services, LLC, properly removes this action from the 150th Judicial District Court of Bexar County, Texas to this Court.

Dated: June 17, 2021

Respectfully submitted,

MCDOWELL HETHERINGTON, LLP

By: /s/ David T. McDowell

David T. McDowell – Attorney in Charge

State Bar No. 00791222

David.mcdowell@mhllp.com

William B. Thomas

State Bar No. 24083965
William.thomas@mhlhp.com
First City Tower
1001 Fannin Street, Suite 2700
Houston, Texas 77002
Telephone: (713) 337-5580
Facsimile: (713) 337-8850

**ATTORNEYS FOR KOCH ENERGY
SERVICES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 17th day of June, 2021, on the following counsel of record by certified mail, return receipt requested and/or email:

Lauren A. Valkenaar
Blake W. Stribling
Barry A. Chasnoff
Adam Kiehne
Adrianna Jimenez
CHASNOFF STRIBLING, LLP
1020 N.E. Loop 410, Suite 150
San Antonio, Texas 78209
Telephone: (210) 469-4155
Fax: (210) 855-9898
lvalkenaar@chasnoffstribling.com
bstribling@chasnoffmungia.com
bchasnoff@chasnoffstribling.com
akiehne@chasnoffstribling.com
ajimenez@chasnoffstribling.com
Attorneys for Plaintiff

/s/ David T. McDowell
David T. McDowell